

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Elwell Post Office  
Elwell, Michigan

Docket No. A2012-112

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

March 13, 2012

I. INTRODUCTION

On January 3, 2012, the Commission received correspondence from postal customer Marjorie Brecht objecting to the Postal Service's decision to close the Elwell, Michigan Post Office (Elwell Post Office).<sup>1</sup> Subsequently, the Commission received a petition for review on January 6, 2012, from John Hutchins.<sup>2</sup> A third petition for review, enclosing a petition containing the signatures of 79 postal customers, was filed by Patricia Walsh Mallory on January 11, 2012.<sup>3</sup> The Postal Service's decision, which is the subject of this proceeding, was made on December 6, 2011.<sup>4</sup>

On January 20, 2012, the Commission issued an order instituting the current review proceedings, appointing the undersigned Public Representative, and establishing a procedural schedule.<sup>5</sup>

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<sup>1</sup> See Letter of Marjorie Brecht, December 30, 2011 (Brecht Petition for Review).

<sup>2</sup> See Letter of John Hutchins, December 29, 2011 (Hutchins Petition for Review).

<sup>3</sup> See Letter of Patricia Walsh Mallory, received January 11, 2012 (Mallory Petition for Review).

<sup>4</sup> Final Determination to Close the Elwell, MI Post Office and Continue to Provide Service by Rural Route Service, December 6, 2011 (Final Determination). The Final Determination was included as Item No. 47 in the revised Administrative Record (Revised AR) filed by the Postal Service on February 10, 2012. Citations to the Final Determination will use the abbreviation "FD" followed by the page number, rather than to Item No. 47. All other items in the revised Administrative Record are referred to as "Revised AR Item No. \_\_\_\_"

<sup>5</sup> PRC Order No. 1155, Notice and Order Accepting Appeal and Establishing Procedural Schedule, January 20, 2012.

## II. STATEMENT OF FACTS

The Elwell Post Office is located at 6477 Pengree Rd, Elwell, Michigan, 48832-9508. Revised AR Item No. 4. Elwell is an unincorporated rural community located in Gratiot County, which is in the central part of the lower peninsula of Michigan. *Id.* The Elwell Post Office provides service to 24 post office box customers and an average of 18 retail customers per day 36 hours per week. Revised AR Items 10, 13 and 18. There are no permit mailers or postage meter customers. Revised AR Item No. 13.

On March 21, 2011, the Postal Service notified customers of the Elwell Post Office of a "possible change in the way your postal service is provided." Revised AR Item No. 21. The notice informed customers that pickup and delivery services, as well as the sale of stamps and all other customer postal services, would be provided by rural route carriers emanating from the Riverdale Post Office. *Id.* Post office box customers were informed that post office box service would continue to be "available at the [Riverdale] location at the same fees." *Id.* The Riverdale office is located approximately 4.8 miles away. *Id.* Customers were also invited to attend a community meeting on April 19, 2011, where postal representatives would be available "to answer questions and provide information about our service." The meeting was held on April 19<sup>th</sup> as scheduled with 17 customers indicating attendance. Revised AR Item No. 24. In addition, customers were asked to complete and return a questionnaire accompanying the notice by the date of the community meeting. Revised AR Item No. 21.

On June 13, 2011, a Proposal to Close the Elwell, MI Post Office and Establish Service by Rural Route Service was posted at the Elwell and Riverdale post offices. Revised AR Item Nos. 32 and 36. Subsequently, on December 6, 2011, the Final Determination was posted at the Elwell Post Office and the Riverdale Post Office for the mandatory 30-day posting period. Revised AR Item No. 47.

The Final Determination states that the decision to close was based upon (1) a decline in workload; (2) effective and regular service will continue to be provided by rural route service emanating from the Riverdale Post Office; and (3) estimated annual savings to the Postal Service of \$51,405. FD at 10. The Final Determination also

notes there would be a one-time expense of \$500 associated with “movement of this facility.” *Id.* In addition, the Final Determination responded to various concerns expressed by postal customers in the questionnaires and at the April 19, 2011, public meeting. *Id.* at 2-9.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

In the Petition for Review filed January 3, 2012, Petitioner Brecht claims that closing the Elwell Post Office would be a hardship to the elderly because of the expense of traveling to Riverdale. Petitioner Hutchins argues that the decision to close would be “a great inconvenience for me personally” and is not in the Postal Service’s long-term best interest. Hutchins Petition for Review. In a Participant Statement, filed February 7, 2012, Petitioner Hutchins claims that at some point prior to the current action, the Postal Service removed rural delivery routes from the Elwell Post Office, which “negatively impacted the Elwell community and internal operation of the Elwell [Post Office].”<sup>6</sup> As a result, the Postal Service’s claim of declining revenue and activity as a basis for the decision to close is a foregone conclusion because of the removal of those rural delivery routes. *Id.* Therefore, Petitioner Hutchins argues those declining revenue and activity figures should not be used as a justification for closing the Elwell Post Office. *Id.*

Petitioner Mallory asserts that the alternative service is inconvenient and will “not provide a maximum degree of regular and effective service.” Mallory Petition for Review. Moreover, Petitioner Mallory, while acknowledging the financial difficulties facing the Postal Service, suggests alternative measures to reduce costs and save jobs in small towns such as Elwell, including closing on Saturdays and/or Wednesdays.<sup>7</sup>

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<sup>6</sup> Participant Statement of John Hutchins, February 7, 2012, at 2 (Hutchins Initial Brief).

<sup>7</sup> *Id.*; see also Participant Statement of Patricia Mallory, February 7, 2012, at 2.

## B. The Postal Service

In PRC Order No. 1155, the Commission directed the Postal Service to “file the applicable administrative record in this appeal.”<sup>8</sup> On January 19, 2012, the Postal Service provided an electronic version of the administrative record.<sup>9</sup> The Postal Service subsequently filed, on February 10, 2012, the “corrected and complete” administrative record supporting the Final Determination to close the Elwell Post Office.<sup>10</sup>

On January 10, 2012, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 1155.<sup>11</sup> In that filing, the Postal Service argues that: (1) it has met all the procedural requirements of section 404(d); and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the community, employees, and the economic savings from the discontinuance of the Elwell facility. *Id.* at 12-13.

## IV. STANDARD OF REVIEW AND APPLICABLE LAW

### A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination,

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<sup>8</sup> PRC Order No. 1155 at 5.

<sup>9</sup> See United States Postal Service Notice of Filing Administrative Record, January 19, 2012 (Notice). The Notice states that the Postal Service is filing an “electronic version” of the administrative record concerning the Final Determination to Close the Elwell, MI Post Office and Extend Service By Rural Route Service. *Id.*

<sup>10</sup> United States Postal Service Notice of Filing Corrected Administrative Record – Errata, February 10, 2012. The Postal Service explains that “Due to time constraints and technological difficulties, Item Nos. 22 and 38 listed on the Official Record Index were not included in the administrative record filed January 19, 2012,” and that the “corrected version . . . completely supplants the one previously filed.” *Id.*

<sup>11</sup> See United States Postal Service Comments Regarding Appeal, February 27, 2012 (Comments).

findings, and conclusions that it finds to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service. Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal.

#### B. The Law Governing Postal Service Determinations

Prior to making a determination to close or consolidate a post office, 39 U.S.C. §404(d)(1) requires that the Postal Service shall provide adequate notice of its intention at least 60 days prior to the proposed date of such action to persons served by such post office to insure they have an opportunity to present their views. The Postal Service's rules require posting of the Final Determination for at least 30 days. 39 CFR 241.3(g)(1)(ii).

In addition, prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404(d)(2) to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

The Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any

action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

The Postal Service also has regulations prescribing its requirements for closing post offices. 39 CFR 241.3.

## V. THE POSTAL SERVICE'S FINAL DETERMINATION

After reviewing the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by the Petitioner, and Postal Service Comments, the Public Representative believes that the Postal Service has complied with the statute and its own rules. This includes posting procedures concerning the Final Determination on December 6, 2011. Moreover, the Postal Service's Final Determination has adequately considered the effect of closing the Elwell Post Office on the community. The Postal Service has also considered the effect of the closing on postal services provided to Elwell customers. In this regard, it appears that effective and regular service will be maintained if the post office is closed.

However, the Final Determination's analysis of the effect on employees of closing the Elwell Post Office is inadequate as it relates to the calculation of economic savings, which are overstated. With these flaws corrected, the economic savings to the Postal Service are positive. Consequently, the Final Determination should be affirmed.

Section 404(d)(2)(A)(iv) requires consideration of "the economic savings to the Postal Service resulting from such closing." This requirement is impacted to a considerable degree by another requirement of Section 404(d): the effect on employees of the Postal Service employed at the office. 39 U.S.C. § 404(d)(2)(A)(ii).

The Postal Service estimates annual savings of \$51,405 from closure of the Elwell Post Office. FD at 10. Most of these savings are attributable to "Postmaster Salary (EAS-53, No COLA)" of \$33,168 and fringe benefits equal to 33.5 percent, or \$11,111. *Id.* The Postmaster at Elwell retired on January 30, 2009, and has not been replaced. Since that time, an Officer-in-Charge (OIC) has operated the Elwell Post

Office as a noncareer Postmaster Relief (PMR). *Id.* No other employee will be affected by the closure. *Id.*

Neither the Petitioners nor any other postal customer directly challenges the Postal Service's calculation of economic savings of \$51,405. Instead, Petitioner Hutchins, as indicated previously, questions the use of declining revenue and activity at the Elwell Post Office as a justification for the decision to close given that the Postal Service ended rural route delivery service out of the post office, thereby causing the decline in revenue. Hutchins Initial Brief at 2. Petitioner Mallory proposes reducing the days the facility is open for business in order to save costs and thereby retain service at the Elwell Post Office. Mallory Petition for Review; see *also* FD at 8-9.

Nevertheless, the Public Representative considers the Postal Service's calculation of economic savings based upon the salary and benefits of an EAS-53 Postmaster to be faulty. The Postal Service has enjoyed economic savings that arise from installing an OIC at a reduced salary and no benefits rather than replacing the EAS-53 Postmaster. However, the Postal Service's calculation of economic savings from closure of the Elwell Post Office is based on the salary and benefits of an EAS-53 postmaster assuming the Elwell Post Office remains open.

The Postal Service's calculation of economic savings is flawed. The Postal Service has relied on an OIC to operate the Elwell Post Office for more than 3 years. The Postal Service is under no obligation of any type to replace the current OIC even if the Elwell Post Office remains open. To the contrary, economic logic suggests that the Postal Service would continue to employ an OIC at the Elwell Post Office to generate future savings rather than installing an EAS-53 Postmaster. Thus, the Postal Service's economic saving calculations based upon the salary and benefits of a future EAS-53 Postmaster, *assuming the Elwell Post Office remains open*, are unlikely and therefore not a basis for estimating savings.

As a result, the Postal Service's calculation of economic savings must begin with the elimination of costs currently being incurred at Elwell Post Office *assuming that office is closed*. It is simply wrong to calculate economic savings based upon the salary

and benefits of a possible future Postmaster assuming continued operation of the Elwell Post Office when the costs to be saved are the real salary costs of the OIC arising from closure of Elwell Post Office. If the post office remains open the Postal Service will incur costs, assuming the appointment of an EAS-55 Postmaster, not cost savings. Therefore, the salary and benefits of the EAS-53 Postmaster should be replaced with the salary of the OIC in the calculation of economic savings.

However, the Postal Service's calculation of economic savings is faulty in another respect. The claim that the noncareer OIC "may be separated from the Postal Service" identifies one obvious alternative for the OIC. Comments at 12. On the other hand, the Postal Service states that "attempts will be made to reassign the employee to a nearby facility." *Id.* at 2 and 12. Or that employee may otherwise continue employment elsewhere with the Postal Service. These are the other obvious alternatives. Consequently, Postal Service simply provides no basis for determining whether the OIC will be separated from or will continue employment with the Postal Service.

Unless and until the Postal Service provides a justification for considering that there will be a reduction in employment associated with closure of the Elwell Post Office, the inflated economic savings claimed by the Postal Service should also be reduced by excluding any assumed employee costs. In the case of the Elwell Post Office, those employee costs represent the amount of OICs salary.

After adjusting the calculation of economic savings by removing the EAS-53 Postmaster costs, and excluding any savings associated with the OICs salary assuming continued employment, the economic savings to the Postal Service are positive. The adjusted economic savings total \$7,126 (\$7,992 Annual Lease Costs, less \$866 Annual Cost of Replacement Service).

## VI. CONCLUSION

The Postal Service's Final Determination to close the Elwell Post Office should be affirmed.



Respectfully Submitted,

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